File No. 82 of 03-04

Serial Nos. 1 - 16

1906.

GENERAL AND REVENUE SECRETARIAT.

No 299-21(1-16)
" 21-32-1-2.
" 68-36(1-2)

(III Courts ~~June~~)

Part A: Manuscript
for June 1906

Serial Nos. 1 - ~~15~~ 16.

Subject:-
Warrants for the levy of criminal fine

G. R. S. 41] 1903.04

GENERAL AND REVENUE SECRETARIAT

(Courts)

NOTES.

File. No 82

FILE HEADING.

Warrants for the levy of criminal fine.

From

The District Magistrate Shimoga.

No. 334/19 Dated 17-12-03 Received —

Diary No. — Enclos. — Spare Copies. — Serial No. 1

BRIEF ABSTRACT OF LETTER.

Requests instructions as to whether there is reciprocity between the Mysore & British India in the matter of the execution of ~~process~~ criminal ~~process~~ warrants for levy of fines

NOTES AND ORDERS.

NOTE—First sheet.

MGCPB—30,000—17-2-05.

(2

Office of the Dewan of Mysore

File No. (illegible)

Directions.

No., date and purport of receipts to be entered in red, and office note in black ink in order of dates.—To be written only on one side, and inside the line of margin.

Office Note.

Chief Judicial

Subject warrants for levy of criminal fines.

1) Letter No 334 dated 17th Decr 1903 19 the Dt Magte, Shimoga, requesting instructions as to whether there is reciprocity between the Mysore and British Dts in the matter of execution of — — — — —

1) The Dt Magte states that under the Chief Court's Notifn No 111 dated 23rd July 1878, warrants for the levy of fines issued by the British Magtes under sections 386 and 387 of the Criminal Pro. Code are being executed by our Magistracy and Police in the same manner as if such warrants had been issued by a Magte having jurisdiction in Mysore; but as the Mysore Criminal Proced

be executed in Mysore (4
Submitted for orders
Yrs

Putup: W[redacted] criminal
(Mr Lig: may have a copy, or,
will get one early) 27/11/78

This book is not available just at present,
but will be sent for. In order to
avoid delay, I furnish my opinion
below.

Wednesday, this is not available before Monday.
29/11/78

S (1) The Chief Commr's notification of July
1878, that "all criminal process
whatever description .... shall be
acted upon and executed" etc, is
rather too widely expressed. But
I doubt if it was intended to
authorize the levy in Mysore of fines inflicted
by British Indian Courts. Such levy
is much more than the mere
execution of a criminal process.

(2) Section 307 of the Criminal Procedure
Code, which says that warrants for the
levy of fines shall authorize distress & sale
of movables within the Court's jurisdiction
when endorsed by the local District
Magistrate, refers clearly to
places within the same territory, here,
British territory. And so, the ruling
of the Madras High Court that such
warrants of British Courts cannot
be executed in Mysore seems

quite correct. The point, however, is one of such importance that some further enquiry may be made, and the Dr. Magte of Shimoga may be asked to give particulars of the instances, which he alleges, in which British fine warrants have been executed by the Magistracy of this country; perhaps also a similar enquiry might be addressed to other Dr Magts also.

The point that immediately requires order is the coverage of the above, viz: whether Mysore warrants for levy of fine can be executed in British India. The answer here is free from doubt, and is, No, they cannot be. The understanding between Mysore & the C & M. States is of a special nature, & does not apply to the case in point.

To Secy

H. Wheeler

I agree in the above views. Drafts (one for enquiry & another, a reply to Dist Magte on the question raised by the Dist Magte through the 2nd Councillor) are submitted.

H.M.
31/12/3

606
2.1.1904

I do not see any drafts in this file. With the Secretariat opinion, however, on the subject, I quite agree and I further agree that an enquiry may be made and an order issued of the kind proposed. I am afraid the late Chief Commissioner's Notification of July 1878 has been misunderstood and has been given a much wider significance than was intended. The law is clear and no reciprocity seems possible. If, however, Mysore is to execute British warrants of Distraint a similar treatment by Madras and Bombay of Mysore warrants should, in my humble opinion, be asked for.

6/11/04

6/1/4

8/1/4

10.1.04

10. II. 04

Draft issued

The following Statement shows the number of warrants for levy of fines sent by Magistrates in British India and executed by the Mysore Magistracy and Police:

District	No of warrants sent by the Court	Whether executed or not	Remarks
Bangalore	7 – from the 2nd Magte C. & M. Stations	All were executed by the Magistracy & Police of the Dt	
	3 – from the Chairman, Bench of Magtes, Bangalore		
Total	10		
Kolar	7 – from the 2nd class C. & M. Stations	3 were returned unexecuted as the person was a pauper & in a partly executed & the rest fully executed	Distress warrants for the levy of money allowances ordered by Magtes in British India in maintenance cases have also been included
	1 – from the Joint Magte, Kolar	This was also returned unexecuted as person was a pauper	
	1 – from the 1st class Magte, Railway C & M. Station	Pending with the Police	
Total	9		
Tumkur	1 – from the Dy Magte, of Anantapur	Executed & the amount recovered remitted	
	1 – from the Amildar Magte of Coorg	Pending	
	1 – from the 2nd class Magte of Kalegundy	Returned unexecuted as the person owned no property in the village	

11) The foregoing statement shows that distress warrants sent by Magts in British India are being invariably executed beyond Magisterial jurisdiction,

12) Submitted for orders

13) Will the Dy Magte's Madras to expedite the further report promised

10/7/14

14) Despatched

15) Draft issued

16) In reply the Dy Magte has submitted a statement showing the cases in which warrants issued by Magtes in British India were executed beyond Magtes. This info is embodied in the statement above

17) Calls a copy of the Madras H.C. Proc of 20-2-79 no. 660, & return the book

The Chief Court -

18) Let me see the correspondence between the Chief Court & the Govt of Madras which led thereto by which forms & orders for the execution of reciprocal warrants will probably be found. Also any Madras Govt rules among the papers sent for recently -

7/4/14

29) The question at issue is one of importance & it is desirable to consult the Chief Court in the matter before it is decided what further action has to be taken.

30) I have fully explained the position in the accompanying D.O. letter to the Registrar.

Sec^y

15.4.04

31) Draft submitted to the Dewan through the 1st Cl^r Cl 17/4/04

1103 T.R.II.-04

by 16/4/04

32) This draft may issue

17-4-04

by 20/4/04

The following letter was issued :-

X Letter No. 2424 dt the 24th May 1904 to the Registrar Chief Court requesting him to obtain the opinion of the Chief Court on the question whether, under the Chief Commissioner's notification No. 111 dated the 23rd July 1898, warrants issued by Magistrates in British India under §§ 386 & 387 of the Criminal Pro Code for the levy of fines imposed on convicted prisoners can be lawfully executed in this State, as also on the question whether a warrant can be issued by a Magistrate in Mysore

G.R.S. 121

General and Revenue Secretariat.

File No. 89 of 1903 &c

Serial No.

to a Magistrate in British India for the recovery of a fine imposed in this State.

Chief Court Registrar's letter No. 645/2 dated the 5th July 1904. forwarding Copies of the minute of the Judge of the Chief Court in the matter.

This under disposal

Subd for orders - Spare Cops of letter No. 84/7 dated the 25th June 1878 referred to in the minutes not being available, the monthly Volume for July 1878 containing the same is put up. Ashtagram Supdt's No. 304 & 21.2.1872. and Jud. Commissioner's No. 2507/329 dated 29/2/1872 are not forthcoming.

V

Ref. to Regr, ch for copies 11/7/04

28 11/7/04 Regr 11-7-04

Resubmitted with expenses.

Regr 11/7/04 Regr 13.7.04

I (signature illegible) think, with great deference to the views expressed by Mr Justice Ranga-Swamiengar, that it is merely begging the

NOTE.—Contn. sheet.

General and Revenue Secretariat.

File No. 82 of 1903-04

Serial No.

1

the question to answer, as in para 1 of his minute, that warrants for the levy of fines must necessarily be classed under "criminal processes," or, as in para 2, that an order of a British Magistrate under s. 88 of the Crim. Pro: Code for the attachment of an absconding person's property must be executed in Mysore. The same learned Judge refers to a ruling said to have been laid down by the Judicial Commr in 1872, to the effect that the Mysore Courts were bound to execute fine warrants from Coorg. I have not been able to trace any ruling a dictum to this effect in the Judl Comrs Memo No 2507/329 of the 29th Feby/1872, which merely forwarded copies of certain correspondence between the Chief Commr of Mysore & the Govt of India, — correspondence which, on the face of it, related to "rules for facilitating the arrest of criminals escaping from British territory into Mysore."

V/2 V(2)

Note.—Contn. sheet.

MGCPB—10 000—19-5-04

General and Revenue Secretariat.

File No. 87 of 1903-04

Serial No.

5

The question under consideration must really be discussed and decided by a reference mainly to the circumstances under which the Notification of 23d July 1878 No. 111 was issued by the late Chief Comm^r; and these afford no warrant for saying, as the Chief Judge (Mr Staley J.) does, that the intention was that "all processes of British Courts including those for realization of fines should be respected in Mysore as they are respected in British territory."

V(1)

The Notifn of 1878 was, it will be seen, the result of orders conveyed by the Govt of India in the Foreign Deptt in their letter no 84 J dy the 25th June 1878. Paras 2 and 3 thereof referred to the fact that an executive order had already been issued by the Chief Comm^r directing that processes of Criminal Courts in Wynaad should be treated and respected as the Magistrates

and

NOTE—Contn. sheet.

MGCPB—10,000—19-4-04

General and Revenue Secretariat.

File No. 82 of 1903-02

Serial No.

and Police of Mysore as if such processes had been issued by Mysore Magistrates; and para 8 suggested that the scope of this Order might be extended so as to include processes issued by the Magistrates of all other districts in British India.

8 It thus becomes of importance to examine the terms of the earlier order* in regard to Wynaad processes. It ran as follows:-

"Under the authority communicated in letter No. 43 C.J. from the Offg Secy to the Govt of India, Foreign Dept, dated 20 Sept. 1877, the Chief Commr directs that, in supersession of the existing orders and practice, all summonses and warrants issued by the Magistrates in the Wynaad District of the Madras Presy for the arrest and surrender of persons charged with offences committed in that District shall be acted upon and executed by the Officers of Police and Magistrates in the Mysore territory and in Coorg in the same way and under the same conditions

A

* Vide Notification No. 630 dated the 2nd Oct. 1877

* Note that this supersedes the rules earlier in force under letter No. 7 dated 26-1-77 referred to by the Madras Govt in Dec 1892.

V2

MGCPB—10,600—19-4-01

Serial No.

"conditions as of the processes aforesaid
"had been issued by Magistrates in Mysore
"and Coorg."

It is clear, therefore, that though the subsequent notifn of 23rd July 1878 referred generally to "all criminal processes of whatsoever description," the processes contemplated therein, & in the earlier notifn of which it was merely an extension to a wider territorial application, were those having for their object "the arrest and surrender of persons charged with offences." In the correspondence relating to these notifns (so far as available in this office) there is no indication that any other judicial proceedings were under contemplation; and, but for the fact that warrants from British Magistrates for the levy of fines have in a certain number of instances been erroneously (as I believe) given effect to, there would

MGCPB—10,000—19-4-04

General and Revenue Secretariat.

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Serial No.

have been no question that such warrants could not be acted upon in the Mysore State.

It is quite possible that on other occasions other meanings may have been attached to the expression "Criminal process." Compare the correspondence ending with letter No. 634-726-85 of 24.2-93 from the Irish-Assist Resident & our letter No. 16793-J.158-92 of 13-4-93, as regards the inclusion of distress warrants. But there the question turned upon the effect of the special arrangements made in 1881 between Mysore and the C & M. Station, & these, as remarked elsewhere, have no bearing on the position as regards Mysore and British India created by the Chief Courts Act of 1873.

I think myself that, in order to clear up doubts, a reference may be made to the British Resident.

B

General and Revenue Secretariat.

File No. 87 of 190 5-6

Serial No.

But before ascertaining what the views of Govt are on a most important question on which there is much scope for difference of opinion, I feel hesitation in submitting a draft.

M Chandrasekhara Aiyar
22nd July 1905

To Deputy Chief
12. 7. 05

133
23.7.04

It is a matter for regret that none of our magistrates have hitherto recently such warrants without paying the question of their validity or otherwise. Now that the matter has come to the notice of Govt, the doubt should be cleared up by a reference to the Resident. I am afraid the Justice, Ranganadhayya had not before him all the literature connected with the Notifica-

General and Revenue Secretariat.

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Serial No.

Act of 1878 when he recorded the opinion which the Chief Judge has concurred "with regret" and with a suggestion that the grant of dubashe should be "otherwise limited" to the Act of 1878 was intended to impose a burden "unjustly". The Junior Magistrate considers that the Act in question cannot have been intended to include dubashe amounts. Mr. Chandrasekhara Iyer has traced the history of the Notification, & I am in entire agreement with his remarks & opinion. A reference to the Act may

Note.—Contn. sheet.

MGCPB—10,000—19-4-04

G.R.S. 12]

18

General and Revenue Secretariat.

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Serial No.

Union engagement in lieu of 24/12/03 and 23/7/04, may accordingly be made.

24/7/04.

Branch III Prepare draft for submission to the Dewan Sahib for approval

Shown before me: 27.7.04.

25/7/04

The draft of a letter to the First Assistt Resident, embodying my views, is submitted.

Lee 4

G. Chandrasekhara
25-7-04

178/28.7.04

I agree to the draft with a slight addition.

29-7-04.

A draft submitted to the Dewan

29.7.1904

1/29.7.04

581/29.7.04.

NOTE—Contn. sheet.

MGCPB—10,000—19-5-04

C. File 82 of 1903-04 19

Submitted to His Highness.

The accompanying correspondence deals with the question whether fine warrants of the British Indian Courts should be executed by the Mysore Courts under the terms of the Chief Commissioner's Notification of 1878, and whether, if so, there should not exist complete reciprocity in the matter between British India and Mysore.

2. The fine warrants of the Mysore courts cannot, as the law now stands, be executed by the British Indian Courts.

3. As regards the other point, the draft to the Residency, herewith submitted, puts the case for the Durbar as well as possible.

4. The Notification in question forms a part of the schedule annexed to the Instrument of Transfer. The ruling of the Madras High Court referred to in the draft letter is under the Criminal Procedure Code and can have no effect on the Chief Commissioner's Notification that embodies in itself an executive order of the Government of India. Still, the ruling is not without significance as it indicates that

Ch File 802 of 03-04

that under the existing laws , the fine warrants of British Indian Courts cannot be legally executed in Mysore and as the scope of the Chief Commissioner's Notification itself is now in question.

5. The draft letter may be kindly approved so that we may elicit the views of the Resident in the matter and shape our future action accordingly.

19.1.06

Misc 116

Cl-Jl. 82 of 1913-14

21

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

Execution by Mysore Courts of Fine Warrants of the British Courts, and the question of reciprocity between British India and Mysore in this matter.

551

Order.

Approved
KRW
10/2/06

Yours
12.2.06

Misc
20/2/06

G.R.S. 12]

22 —

General and Revenue Secretariat.

File No. 82 of 1903

Serial No.

From the Dy. Resident in Mysore No. 811 646 dy 16/2/66.

Requests him to favor the Durbar with the views of the Hon'ble the Resident on the question whether warrants for the levy of fines imposed on convicted persons issued by the Courts in British India come within the scope of the Commissioner's Notification of July 1878 declaring that the Durbar are of opinion that personal processes and all that are not enumerated in the notification in question are to be executed & that warrants affecting property are not only outside its scope but are also unsuitable, unless the sanction of the Govt of India the law is so amended as to remove an obvious anomaly & make the enforcement of such warrants as legal in B. India as in Mysore.

From the Secy Officer No. 1558 dy 24/3/66

States that the having regard to the expression "all criminal proces

Note.—Contn. sheet.]

MGCPB—10 000—19-5-04

General and Revenue Secretariat.

(Old) File No. of 1903-04

Serial No.

of whatever description employed in the Notification in question, the Govt. the Resident is of opinion that the application cannot be restricted to personal process only & that the long prevailing practice of treating warrants affecting property as being within its scope is completely justified; that it is useless to approach the Govt of India for reciprocity in the matter & that the ruling of the Madras High Ct. is not now relevant to the point under consideration.

Ltr for orders. A reply is due to the Deputy Commissioner of Shimoga with reference to his letter No. 3341/58 the 15th Dec 03.

M.Z

M.C. 8/1/04 SW 8/1/04 Read the whole correspondence in abstract, and pass orders. ~~Keeping these letters~~ embodying the decision reached on both branches of the subject.

L 7-1-04

NOTE—Contn. sheet.

MGCPB—10,000—19-5-04

Serial No.

Surrender Subd to the Devan this the 18th Cur-
rent.
8/4/06. ciller.

The Hnible the Resident has dealt with our representation somewhat summarily. But it does not seem expedient to pursue the matter further, & his decision may be accepted.

11.4.06

83/14-4-06

Suppose the Resident's view is acted upon and property is attached at Tuticorin in execution of a warrant issued by a Magistrate in the territory. Suppose claims arise to such property adverse to the rights of the person against whom the warrant has issued. Where will such claims have to be lodged & what tribunal would decide them? Attorney

As desired by the Secretary I beg to state below my views on the questions raised above:—

The Criminal Procedure Code contains no provision entitling a person to prefer a claim to any property seized under sec 387 before a criminal court. There is no express authority empowering or binding the Collector to entertain & hear such claims. No procedure for hearing such cases has

GPB—50,000—23 10-05

Serial No.

been prescribed.

(1) The Calcutta High Court is of opinion that no Magistrate is bound to hear such claims. I.L.R 22. Cal 935. (Herewith submitted).

(2) The Madras High Court is of opinion that in disputed cases the Magistrate concerned "should stay the sale of the property seized to give the claimant time to establish his right". (I.L.R 20 Mad 88. herewith submitted).

The aggrieved party has the ~~right~~ remedy of applying to the Civil Court having jurisdiction for a declaration of his right to the property in dispute.

Apart from this, the principal power is to direct seizure of property in pursuance of a warrant issued by Magistrate having jurisdiction in any District of British India. This power, the Mysore Courts have exercise under the authority of the Chief Commissioner's notification. The power to order disposal of property seized in exercise of the principal power may well be viewed as vesting in the Mysore Courts.

D. M. Narayana Rao
2.5.1906

Note.—Contn. sheet

GPB—50,000—10-05

18/5/06
3-5-06.

To/ Recommitted
2.5.1906
PTV 28/4

Serial No.

The proposed Draft may be approved
Letter 10th May 06
JC

68) Draft submitted Letter
Devan Sahib &
H. S. 1906

635
14.3.06.

Submitted to His Highness.

The First Assistant Resident's reply to the Durbar's letter of the 16th February 1906, regarding the execution of warrants for the levy of fines issued by Courts in British India.

It does not seem worth while to pursue the matter further.

A draft order embodying the decision reached on this point, as well as on the converse question of the execution of warrants issued by Mysore Courts, is submitted for approval.

1/6/1906 — 1/6 [illegible]

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

Draft order in re execution by Durbar Courts of warrants for the levy of fines issued by courts in British India.

Order.

Approved

~~KRW~~

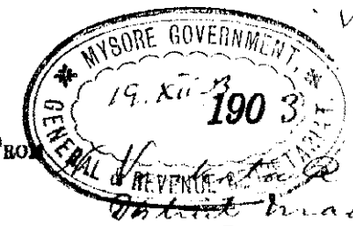
5/6/06

7/6/1906

Issue draft order -

8/6/06

15 June 06



1967 G.C. 14

From H. V. Nanjundayya Esqre B.A. B.L.
District Magistrate,
Shimoga.

To H. V. Nanjundayya Esqre B.A. B.L.
Secretary to the Govt of Mysore
General and Rev. Depts.

Dated 17th December 1903.

Despatched

Received

General No. 334
No. 14

Enclosure No. 3.

I do forward a copy of letter No. 147 dated 5th May 1903 from the 1st Asst Commr Magistrate and requests to be informed if there is no reciprocity between the Mysore State and the British districts in the matter of distress warrants of persons holding property in British territories.

Srd
19.12.

No. 334 Ex 3.
19

District Magistrate's Court,
Shimoga,
17th December 1903.

From,

K. Venkata Rao Esquire,
District Magistrate,
Shimoga.

To K. V. Ranjandayya Esquire, B.A., B.L.,
Secretary to the Govt. of Mysore,
General and Revenue Depts.

Sir,

In forwarding herewith enquiry of letter No. 147 dated 5th May 1903 and the two subsequent reminders from the 1st Assistant Commissioner and 1st Class Magistrate, Shimoga, I have the honour to state that there are a few instances in which persons found in criminal cases by Mysore Magistrates possess no immovable property in Mysore, but are reported to own property in British territory and no arrangements for attaching and selling such property are issued as sections 386 and 387 of the Criminal Procedure Code

Code do not seem to contemplate the procedure, the Mysore Criminal Procedure Code being applicable only to Mysore. On the other hand warrants for the levy of fines issued by the British Magistrates under Sections 386 and 387 of the Criminal Procedure Code are being executed by our Magistracy and Police in the same manner as if such warrants had been issued by a Magistrate having jurisdiction in Mysore as required by the Chief Commissioner's Notification No. 111 dated 23rd April 1878. I therefore request to be informed if there is reciprocity between the Mysore State and the British Districts in the matter of execution of distress warrants as there is between the Civil and Military stations Bangalore and the rest of Mysore.

I have the honour to be
Sir,
Your most obedient servant,
K. Venkatarao
District Magistrate,
Shimoga

Dated

1903.

From,
A. Aranda Rao Esquire,
1st Class Magistrate and
Ex-officio Commissioner
Shimoga District.

To
K. B. Gullanna Chetty Esquire,
District Magistrate,
Shimoga.

Dated 5th May 1903.

No. 1167.

Sir, In Criminal Case No. 32 of 1902-03 on the file of this Court, the accused Dona Rao was fined Rs. 6-1-0 for Criminal Breach of Trust and a warrant for the recovery thereof was sent to the Devihalli Taluk Cutcherry, who returned it with an endorsement to the effect that the accused has no property of any kind in the District but that he has property in the Kundapur Taluk.

I have the honour to request that you will be pleased to inform me whether warrants for the levy of fines could be issued from this District to Magistrates in British Territory and through whom.

I have &c.

(Signed) A. Aranda Rao
"Copy" 1st Class Magistrate.

K. Gullanna Rao
District Magistrate.

No 92. Office of the 1st Asst Commr and 1st Class Magistrate, Shimoga District. Shimoga 13th October 03.

From, K. Narayana Rao Esquire, 1st Asst Commr and 1st Class Magistrate, Shimoga District.

To K. Venkata Rao Esquire, District Magistrate, Shimoga District.

Sir, I do invite your attention to this office No 147 dated 5th January 1903, re the attachment of accused's property in British Territory for fine imposed by the Magistrate of this Province. I have the honour to request if the orders of Government have been received on the subject and if so to intimate the same to me at an early date for communication to the Superintendent of Post Offices who has been writing me to let him know the decision of Government in the matter.

I have &c
/ Signed / K. Narayana Rao
1st Class Magistrate,
Shimoga

"Copy"

K. Venkata Rao
District Magistrate,
Shimoga.

(Ent)

1903.

From,

K. Kamugasa Rao Esqire,
1st Class Magistrate,
Shimoga District.

To

K. Venkata Rao Esqire,
District-Magistrate,
Shimoga.

Dated 2nd December 1903.

No 125.

Sir, I have the honour to invite your attention to this Office No 92 dated 20th October 1903 and to request that you will kindly favour with an early reply, as remittances have been received to day from the Superintendent of Post Offices on the subject.

I have &c

/ Signed / K. Kamugasa Rao,
1st Class Magistrate,
Shimoga District.

"Copy"

K. Venkata Rao
District Magistrate,
Shimoga.

Ext

34

Order No. 1638-468 dated 13th Feb 1884

District Magistrates are requested to state whether there are ~~of a very early date particulars of the~~ instances in which warrants for the levy of Criminal Fines have been passed by Magistrates in British India and if so, to give particulars of such instances with a view to ascertain whether the warrants were executed by the Magistracy and Police in Mysore.

2. The information called for may be submitted at an early date

By order
13/2/84
Secretary

To.
All District Magistrates

35 J 1248

1904

From A. Ramanujachingar Esq
District Magistrate
Chitaldrug District

To L. Arun Kesavi Rao Esq B.A.
Secretary to the Government of
His Highness the Maharaja of Mysore,
General and Revenue Departments,
Bangalore

Dated 15th
Despatched 16th February 1904
Received

General No. 436.
No.

Enclosure No. 4

Proceedings of the Government of Mysore No. 1639-46 dated the 13th instant, requesting to state whether there are instances in which warrants for the levy of criminal fines have been received from Magistrates in British India and whether such warrants were executed in Mysore.

In reply, has the honor to state that there were no such instances in this District

A. Ramanujachingar
District Magistrate
Chitaldrug District

J 1248
17-2-04

MYSORE GOVERNMENT
GENERAL & REVENUE SECRETARIAT
19 FEB 1904
1903

8/1258
3

From The Assistant Magistrate of Kankar.

To The Secretary to the Government of Mysore General and Revenue Depts.

Dated 17th

Despatched 17th February 1904

Received

General No. 408

No.

Enclosure No.

His no. 1639-46 dt 13.2.04.

I

Replying that an instance was reported to— in which a criminal for whom warrants from the Hob. Magistrate of Karkal, South Canara District, was received in the Koppa Taluk and executed; and that further information is called for from Talukas.

Ans
19.2.04.

Asst. Commr
19/2/04

District Magistrate's Office
Kadur District
Chikmagalur 17th February 1911

From

M. Narain Rao Esqr.
District Magistrate of Kadur

To

L. Anantasami Rao Esqr B.A.
Offg. Secretary to the Government
of Mysore, General and Revenue Depts.

Sir,

With reference to Government
Proceedings No. 1639-46 dated 13th
Instt, I have the honor to report
that during the current official
year, an instance has been reported
from the Koppa Taluk of the receipt
by the Amildar Magistrate of that
Taluk direct from the Submagistrate
of Narkal, South Canara District,
a warrant for the levy of a cri-
minal fine imposed by the latter
on one Santhia Heggade residing
in the Koppa Taluk. In execution
of the warrant, the moveable

property

property of the said Sanchia Aggada was attached and sold by the Assistant Magistrate of Koppa and the proceeds of the Sale, viz, Rs 11-0-0, were remitted to the Karkal Sub-Magistrate by means of a postal money Order.

2. A circular has been issued to all the Taluk magistrates in the District, calling for a Statement of all such cases within the last five years and a further report will be submitted on receipt of the information.

I have the honor to be,
Sir,
Your most Obedient Servant

M Narain Rao
District Magistrate
of Kadur

S.S. -

J 12 77

38

1903.

From

D. Devanna Nayaka Esqre
District Magistrate
Hassan District.

To

L. Anantarama Row Esqre B.A
Officiating Secretary to the
Government of Mysore
Legal & Rev: Departments.

Dated 21st February 1904

Despatched 22nd

Received

General No. 392

No. dear

Enclosure No. nil

Referring to Government Proceedings No. 1639-46 J. of the 13th instant, I have the honor to state that no warrants for the levy of Criminal fines & fees realised during the year 1902-03 or until now during the current year.

D Devanna Nayaka

for District Magistrate
Hassan District

DdN

Read
24.2.04.

Read

J 13 & 7.

1903

From The A.S. Magistrate
Bangalore Dr

To The Secy to the Govt
of Mysore
Revenue Department
Marchlane

Dated 2nd
Despatched 3rd
Received
General No.
S. No. 183
Enclosure No.

Govt Pro: No. 1639-46 of 13th
Feb'y 1903.

Points out instances in
which warrants for the levy
of criminal fines were received
from Magistrates in British India
and executed by the Magistracy
and the Police

32

Jud
4. 3. 4

39

Bangalore District
~~District Magistrate's~~ Office
Bangalore 2nd March 04.

From

M. Chengiah Chetty Esqr B.A.
Senior Asst: Commissioner Magistrate
in charge District Magistrate's office
Bangalore District.

To

L. Anantasamy Rao Esqr B.A.
Offg: Secretary to the Government of Mysore
General and Revenue Departments.

Sir,

In acknowledging the receipt of your Proceedings No 1639-46 of 13th ultimo, requesting to be informed whether there are instances in which warrants for the levy of Criminal fines have been received from Magistrates in British India, &c, I have the honor to state that on a reference to the Judicial "Issue" registers of this office from July 1902, it has been found that warrants as per margin of the kind referred to in the above, have been received here for needful action, from the Magistrates in the Civil and Military Station, Bangalore and that they were executed by the Magistracy and

I have the honor to be,
Sir,
Your most obedient servant,

District Magistrate,
Bangalore District.

MM.

X. 2nd Magistrate, 9th Dr. Watson, Bangalore

1.	A warrant, with his letter No 821	dt	21-9-02	Chairman, Board of Magistrates, Bangalore
2.	——— do ———	389	7-7-03	2 warrants with his letter No 928 dt 28-8-03
3.	——— do ———	587 & 627	27-8-03	
4.	——— do ———	683	17-9-03	1 ——— do ——— 1457 dt 1-12-03
5.	——— do ———	977	10-12-03	
6.	——— do ———	1050	7-1-04	
7.	——— do ———	1239	24-2-04,	

J1373

190 3-04

From

The Dist Magistrate

Mysore

To

The Secretary,

Govt of Genl Depts

Dated 5th March 1904

Despatched

Received

General No. 509

No.

Enclosure No.

Reports that no warrants were received from the Magistrate in Br. India for levy of criminal fines in the last ½ year.

J.d.e

7.3.4

MGCPB—50 reams—6-12-02.

No. 44 Mysore Dist: Magistr's office
Dated 5th March 1904.

From,

M. Krishnaji Rao Esq: B.A.
District Magistrate
of Mysore.

To

L. Annathaswami Rao Esq: B.A.
Secretary to the Govt.
of Mysore
Genl: & Rev: Depts:.

Sir,

Adverting to Government
Proceedings No: 1639-46 dated the
13th February 1904 and subsequent
reminder thereon, requesting in
formation regarding warrants
for the levy of Criminal fines,
received from Magistrates in
British India, I have the honor
to state, that from reports re-
ceived from the several Taluk
Magistrates of the District, it is
gathered that no such warrants
have been received during the
last half year. Two warrants

were received in this Office from the
Sub Magistrate of Vayithiri in the
month of February last and
they have been sent for execution
to the Magistrates Concerned.

I have the honor to be,
Sir,
Your most Obt Servt
[illegible]
District Magistrate
& of Mysore

No. 1364

1903-04

From The District Magistrate of Tumkur

To The Secretary to the Govt of H.H. the Maharaja of Mysore, General & Revenue Departments

Dated
Despatched 3rd / 4th March 1904.
Received

General No. 433
No.

Enclosure No. /

Enclosing a Memorandum giving particulars of instances in which warrants for the levy of criminal fines have been received from Magistrates in British India.

J.V.C
S.T.S. 4

49

District Magistrate's office,
Tumkur District
Tumkur 31st March 1904.

From

M. V. Krishnamma Chetty Esq.,
District Magistrate
of Tumkur.

To

L. Narasimha Rao Esq., B.A.,
Offg: Secretary to the Government of
His Highness the Maharaja of Mysore,
General and Revenue Department.

In reply to Government Proceedings
No 1639-46 dated 13th February 1904, I have
the honor to enclose a Memorandum giving
particulars of instances in which warrants for
the levy of criminal fines in this District
have been received from Magistrates in
British India.

I have the honor to be,
Sir
Your most obedient servant,

[illegible]
for District Magistrate
of Tumkur.

L.G.

Memorandum

1 A warrant for the levy of the fine of Rs 20/- imposed in Criminal Case No 35 of 1902 on the file of the Deputy Magistrate of Anantapur Division, on Muthéyanda of Thondoti in the Madalagiri Taluk, was received for execution in the Court of the Amildar Magistrate of Madalagiri. It was Executed and the amount of Rs 20/- remitted to that Court on 28th May 1903.

2 A warrant for the levy of Rs 50/ being the amount of the bail bond in Criminal Case No 76 of 1903 on the file of the Amildar Magistrate of Uttarena, Coorg, from Shanbhog Venkannayya of Gollahalli, Chiknaikanhalli Taluk was received on 18th February 1904 The warrant has not been returned Executed as yet.

3 In the Sarvagada Taluk two warrants had been received since 1889 and both have been returned to the Courts concerned under the following circumstances.

The first one was received on the 25th September 1900 from the Court of 2nd Class Magistrate of Kalyandurga for levying Rs 200/- from Ramachar in Convicted under sections 461 and 380, I. P. C. It was returned unexecuted to the Court as Ramachar owned no immovable property in the Bettadakelagamichalli village, Sarvagada Taluk.

The second was received on 6th March 190

from the Stationary Magistrate of Periyapatna for levying Rs 20/- from Sakkarigadu of Appajipalli Convicted under Section 408 I.P.C. It was returned unexecuted to the Court as Sakkarigadu owned no property in the Appajipalli village.

4. A warrant for levy of Rs 150/- from Mallegowda of Hagalur, Hunsekere Sub-Taluk under Section 546 of the Criminal Procedure Code was received on 1st December 1889. It was executed and the amount of Rs 150/- was sent to the Court by the Deputy Amildar Magistrate of Hunsekere on 20th December 1889.

5. In the Hootagere Sub-Taluk a warrant for the levy of Rs 21/- under Breach of Contract Act from Balagere Muniga of Pampur in the Hootagere Sub-Taluk was received from Nanjanagapatna Taluk. The amount of Rs 21/- was sent on 21st May 1900 to the Court by the Deputy Amildar Magistrate of Hootagere.

[illegible]

for District Magistrate

of Tumkur.

J 1404

MYSORE GOVERNMENT 1904

From A. Cooper Esq
Deputy Commissioner
Dist. & Sessions Magistrate
Kolar District

To
P. K. Venkatavaradiengar Esq
Secretary to the Govt
of Mysore
Rev & Genl Depts.

Dated 9th March 1904

Despatched 10th

Received

General No. C. 1216

No.

Enclosure No. One

Forwarding a statement showing the number of warrants for the issue of Criminal fines received from Magistrates in British India. —

Jud
11 3 4
11.3.1904

Kolar Deputy Commissioner's Office
Champion Reefs 9th March 1904

To,

A. O. Cocks Esqre
District Magistrate,
Kolar District.

&c,

B. K. Venkata Narasimhiengar Esqre
Secretary to the Government
of Mysore — General Revenue
Department.

Sir,

With reference to Government Proceedings No 1639-46 dated 13th February 1904, I have the honour to forward herewith, an Abstract showing, the number of warrants for the levy of Criminal fines received from Magistrates in British India, and the result of their execution. Distress warrants for the levy of money allowances ordered by Magistrates in British India in Maintenance cases, and received in this District for execution, have also been included in the Statement, as under Section 547 Cr. P. C. such amounts are recoverable as if they were fines and the coercive process adopted is similar in both cases. —

I have the honour to be
Sir,
Your most obedient servant

[illegible]
District Magistrate
Kolar District

in British India for execution in this District.

Serial No.	Name of Magistrate & name of person on the warrant issuing the warrant & on his case No. on his file.	Name of person on the warrant & on his residence of such person.	Amount levied or fine	If other Officers levying	Remarks.
1.	II^nd Class Magistrate C.R. Station Bangalore Cant. Warrant No. 39 dated 28-3-95.	Sri Ranjiah Chickpowa, Malur Taluk.	25	Not levied	Returned by the Police of Malur unexecuted as the bunchaugedars declared that the person was a pauper.
2	——— Do ——— Cri. Case No. 673 of 96-97 Warrant No. 374 of 9-1-97	Syed Mohaideen Mastri Malur Taluk.	15	Do	——— Do ———
3	Joint Magistrate, Salem Cri. Case No. 41 Warrant No. 40 of 24-7-01.	Chokka of Kadaiemahalli Malur Taluk.	25	Do	——— Do ———
4.	II^nd Class Magistrate C.R. Station Bangalore Cri. Case No. 122 of 03-04 (maintenance case)	Poonan, Coachman English Warehouse	30 8	Rs 8 Levied	Police of Champion Reefs. Rs 5/- was paid - The remainder was not recovered as the individual had no property
5	——— Do ——— maintenance Case No. 131 of 03-04.	William Ward Watchman Champion	6	Levied	——Do—— Paid by the individual.

6	do	do	9	do	do
7	do	do	9	do	do
8	do	do	6	not levied	Warrant returned unexecuted as the individual has left the Gold field
9	1st Class Magistrate Railway, Cantonment Station Bangalore	Robertsonpet Bowringpet	5	do.	Pending with the Police of Bowringpet since 26-1-04 as the individual is not to be found in Bowringpet

W. Lewin
District Magistrate
Kolar District

J 1465

MYSORE GOVERNMENT
1904
5 MAR 1904

From M. S. Narayana Rao Esq.
District Magistrate
Shimoga

To L. Anantaswami Rao Esq.
Offg Secretary to the Govt
of Mysore
General Rev. Depts.

Dated 22d March 1904

Despatched

Received

General No. 573

No. 36.

Enclosure No. 1

Adverting to Government order No 1639-46 J. dated 13th February 1904 forwarding a statement shewing particulars of warrants for levy of Cr. fines received from Magistrates in British India for the last 3 years.

Jud
22.3.04

1904

From M. S. Narayana Rao Esq.
District Magistrate
Shimoga District

To T. Ananta Swami Rao Esq.
Offg Secretary to the Government
of Mysore
General and Revenue Depts.

Dated 22nd March 1904

No 513/36 Ew/.

Adverting to Government order No 1639-46/J dated 13th February 1904 and the two subsequent reminders has the honour to submit herewith a statement shewing particulars of Warrants for the levy of criminal fines received from Magistrates in British India and executed by the Magistracy and Police in Mysore during the last 3 years.

M. Narayana Rao
For District Magistrate
Shimoga.

9/3/1

Statement shewing the particulars of warrants for the levy of criminal fines received from Magistrates in British India and executed by the Magistracy and Police in Mysore during the years 1901-02, 1902-03 & 1903-04

Serial No	Name of the Court which issued the warrant.	Name of accused	Amount of fine levied	Amount realized and remitted to the Courts concerned	Date on which warrant was received or executed.	Remarks.
1 XX	Mamledar and 1st class Magistrate of Sirsi, North Kanara	Nagappa Gowda	Rs 50-0-0	Rs 50-0-0	6-7-03.	Executed in the Sorab Taluk.
2	Taluk Magistrate of Ranebennur Dharwar District	Peeravva	Rs 60-0-0	Rs 60-0-0	14-3-03	—do— Chennagiri Taluk.
3	Second class Magistrate of Siddapur	Venkatappa ramaiya	Rs 50-0-0	Rs 50-0-0	25-12-02	—do— Tirthalli Taluk

Shimoga
22nd March 1904.

J. Rosario

M. Hamilton
District Magistrate
Shimoga

1535

1903-04

From The District Magistrate of Kadur

To The Secretary to the Government of Mysore General and Revenue Depatts

Dated Camp Hindgere 5th

Despatched 8th } April 1904

Received Camp No. A.

~~General No.~~

No.

Enclosure No.

His Docket No. 2059 dt 30-3-04

Submitting the Statement Showing the particulars of instances in which warrants for the levy of Criminal fines have been received in this District from Magistrates in British India.

Jud
6-4-04

District Magistrate's Office
Kadur District
Camp Mudgere 5th April 1904.

M. Narain Rao Esqr
District Magistrate of Kadur

L. Anantasami Rao Esqr, B.A.,
Offg. Secretary to the Government
of Mysore, General & Revenue Depts.

Sir,

With reference to your Docket
No. 1059 dated 30th ultimo and in continu-
ation of this office letter No. 408 dated
5th February 1904, I have the honor to
submit herewith a Statement shewing
the instances in which warrants for the
levy of Criminal fines have been
received from Magistrates in British
India by Magistrates in this
District during the five years
commencing from 1st July 1898.

I have the honor to be,
Sir,
Your most Obedient Servant

M Narain Rao
District Magistrate
of Kadur

Statement shewing the particulars of instances in
be received from Magistrates in British India, by
commencing from 1st July 1898. —— 50

	2	3	4	5	6
	Name of Court by which warrant was received.	Name of Court by which warrant was issued	Number of case and Year	Name of accused and his residence in Bijapur	Amount of fine imposed
386	Amildar Magistrate Tarikere, through District Magistrate Kadur.	District Magistrate, Anantapur, Madras Presidency.	--	K. Narnachari of Surapur village, Tarikere Taluk.	Rs 1000/-
3 number 2nd Given date 29-9-02	Amildar Magistrate, Koppa	2d Class Magistrate Udipi, South Canara District, Madras Presidency.	241 1902	Muhamad Khasim of Kuppana-makki, Koppa Taluk	Rs 7/-
220	Do.	Sub-Magistrate Karkal, South Canara District. — Madras Presidency.	..	Santiah Hegade of Dasanakodige Koppa Taluk.	Rs 50/-
110	Amildar Magistrate Mudgere.	Magistrate of Bantwal South Canara District, Madras Presidency	15-5-02	Koraga of Kalasa village Mudgere Taluk.	Re 1/-

(Sd) Mudgere
5th April 1904

which warrants for the [illegible] of Criminal fines have
been issued in the Kadur District, for the five years

	* Whether the warrants Executed or not.	Remarks.
	8	9.
4-5-1902.	Not Executed owing to the accused not owning any moveable property in the Varikere Taluk. —	Intimation sent accordingly to the Magistrate concerned in August 1902. —
1-6-02	Executed. Amount remitted to the Court concerned.	—
12-8-03	Executed. — Amount recovered, viz, Rs as ℔ by the attachment and Sale of the moveable property of the accused was remitted to the Court concerned by Postal Money Order	* Referred to in this office letter No 408 dated 17th February 1904.
1-7-02.	Amount recovered and remitted to the Court concerned.	—

By Command &c.

District Magistrate Kadur Dist.

51 12

2424
D
14.5.04

To
The Registrar of the
Chief Court of Mysore

Sir,

I am directed to forward herewith a file of papers relating to the question whether, under the Chief Commissioner's Notification No. 111 of the 23rd July 1878, warrants issued by Magistrates in British India under sections 386 & 387 of the Criminal Procedure Code for the levy of fines imposed on convicted prisoners can lawfully be executed in the Mysore State.

2. It is true that the Mysore ~~refers & declares~~ all criminal processes of whatsoever description. It is, however, a matter for doubt

Cl.
19-4-04

Whether it could have been intended thereby to authorize the levy of a fine inflicted by British Indian Courts, as such levy seems to involve much more than the mere execution of a criminal process— Section 387 of the Criminal Procedure Code, which says that warrants for the levy of fines shall authorize seizure and sale of moveable property within the Court's jurisdiction when endorsed by the local District Magistrate, refers clearly to places within the same territory; here, British India. Accordingly the ruling of the Madras High Court—, in Proceedings dated the 28th July 1879, — which is printed at page 987 of Weir's Digest, and which is quoted with approval in letter no. 1441—1730 of the 30th April 1891 from the Legal Remembrancer to the Chief Court of Lower

S.no 3

The Sessions Judge
Nandidrug Division,
— seems to be based on
good grounds, & to suffer
the position that dishes
warrants ~~issued~~ issued by
criminal Courts in one
territory cannot be executed
in another.

3. The reports received
from the several ~~District~~ Magistrates
in Mysore however, show
that such warrants are
being executed by the
local Magistracy & Police.
In view of the great importance
of the Question, & of the conflict
which seems to exist between
rulings & practice
the Government will be
obliged if you will kindly
lay the papers before
the Judges of the Chief
Court and favour Govt
with an expression of
their opinion on the Question
referred to under Address,
as also on the connexe Question
raised
by the ~~District~~ Magistrate of

Shimoga, Vs. Whether a 54
warrant can be issued
by a Magistrate in Mysore
to a Magistrate in British
India for the recovery of a
fine imposed in this State.
The understanding which exists in this
matter between Mysore & the Civil & Military
Bangalore is of a special nature & does not
apply to the relations between Mysore & Madras.
See 26

1.8493

12/5/04

10.V.04

12/5/04

12/5/04

Nr 69 Serial and 2 files of papers.

55 JUL 13

Bangalore.

5th July 1904. 5C 13.

From

V.A.Rajaratna Mudaliar Esquire,

Registrar of the Chief Court of Mysore.

To

B.K.Venkata Varada Iyengar Esquire,

Secretary to the Government of Mysore,

General and Revenue Departments.

Sir,

Referring to your letter No.2424/J dated 14th May 1904, I am directed to forward copies of the Minutes of the Judges on the questions raised therein, namely 1.whether Warrants issued by Magistrates in British India under Sections 386 and 387 of the Criminal Procedure Code for the levy of fines imposed on convicted prisoners can lawfully be executed in the Mysore State and 2. whether a warrant can be issued by a Magistrate in Mysore to a Magistrate in British India for the recovery of a fine imposed in this State.

The file of papers received with your letter is returned.

I have the honor to be,

Sir,

Your most obedient servant;

Registrar.

Mlw

MINUTES OF THE JUDGES.

Mr.Justice A.Rangasawmi Iyengar:-

The question raised in the above reference from Government is "Whether warrants issued under sections 386 and 387 of the Criminal procedure Code can be considered to be included in Chief Commissioner's Notification No.111 dated 25rd July 1878". The words of the Notification, Viz: "All criminal processes of whatsoever description" seem to be wide enough to include these warrants. Though these warrants occur in the chapter relating to execution and have not been referred to in Chapter VI part D containing "other Rules regarding processes", it follows from the very nature of the documents in question that they must be classed under "criminal processes".

It is argued that because these warrants necessitate the distraint and sale of moveable property outside the Court's Jurisdiction, it involves much more than the mere execution of a criminal process. But under section 88, para 2, a Court issuing a proclamation has the power to order the attachment of both moveable and immoveable property belonging to an absconding person outside its Jurisdiction and such an order of a British Magistrate will have to be executed in the Mysore Province under the Notification in question. This argument cannot therefore be considered to have much force.

It is true the High Court of Madras have held that such warrants could not be executed in Foreign Territory under the Provisions of the Criminal Procedure Code. But the Executive order of the Government of India has the force

of a legal enactment in Mysore, and if such an order applies to these warrants the High Court Ruling will be of no avail. It will be observed that, in the India letter quoted in the Chief Commissioner's Proceedings, the principle laid down by the High Court is admitted and it is pointed out that an executive order of Government is sufficient to enable the Mysore Courts to respect the Civil and Criminal processes issued by the Courts of British India. In fact, the gist of the said letter is that processes of British Courts should be respected in Mysore exactly in the same manner as if they had been issued by the Mysore Courts irrespective of the provisions of the Criminal Procedure Code, while the processes of Mysore Courts would be respected only to the extent provided for in certain enactments, the service of summons alone being ensured by executive orders.

It should also be noted that, so early as in 1872 the Judicial Commissioner has held that the Mysore Courts were bound to execute a warrant for the levy of fine -- issued by a Court in Coorg, while the Magistrate of South Canara declined, on the advice of the Advocate General at Madras, to execute a similar warrant issued by the Superintendent, Ashtagram Division. The correspondence on the subject evidently assumes that, in the matter of execution there is no difference between a warrant for the levy of a fine and that for the arrest and surrender of an offender. See Ashtagram Superintendent's No.304 dated 21.3.1872 and Judicial Commissioner's No.2507/329 dated 29th February 1872.

For these reasons, I feel compelled to hold that the warrant in question would appear to fall under the Chief Commissioner's Notification and will have to be respected by the Mysore Courts.

25.5.1904.

Sd. A.Rangasawmi Iyengar.

Judge.

Mr.Justice H.V.Manjundayya:-

In my humble opinion, warrants issued by Magistrates in British India for the recovery of fines imposed on convicted prisoners cannot be lawfully executed in this State. The matter is no doubt some what complicated by the fact of our Magistrates having executed such warrants without objection so long; but that by itself is insufficient to render the practice legal.

2. Assuming for the sake of argument, that the Executive order of the Chief Commissioner (Notification 111 of 1878) is sufficient authority for the Mysore Magistrates to execute all British India processes, and that such warrants are processes within the purview of the said Notification, it can still be clearly shown that they cannot be enforced here. According to the terms of the order, the processes that can be acted on by our Magistrates are those that have been issued "by any Magistrate having jurisdiction in any District of British India". This word should be here taken to be jurisdiction to give the particular direction embodied in the warrant or order to be executed. Under section 387, a warrant for the levy of a fine may be executed within the limits of the issuing Magistrate's jurisdiction, and can have effect elsewhere only when endorsed by the District Magistrate of the place. How a District Magistrate in British India could endorse such a warrant on the authority of this section itself; but a Mysore District Magistrate cannot legally do so, as the British Code is no authority for him. Moreover, even his authority would not cure the defect of jurisdiction in the Magistrate who issued the original warrant, for the Code under which he acts only refers to British India.

3. If it is held that this process may be executed

it

It would likewise follow that a Magistrate in British India can order attachment of moveable or immoveable property under section 88. It seems to me to be going too far to believe that it could have been within the contemplation of this Notification to authorize a foreign Magistrate to interfere in such wholesale manner with property situated within the Territory of this State. But the words of Section 88 also are clear in limiting the operation to British India.

As the reasons given above seem to me to be quite conclusive, it is unnecessary to refer to the principle that no extra-territorial operation is given as a rule, to orders and processes for the levy of mere fines and penalties.

10th May 1904. Sd. H.V.Nanjundayya.

Judge.

The Chief Judge:-

I am inclined with regret to agree with the opinion of Mr. Justice Rangasawmi Iyengar for the reasons stated by him. The Notification of the 23rd July 1878 was issued in accordance with the instructions of the Government of India contained in thier - Letter No.84 J dated 25th June 1878. Those instructions clearly show that it was the intention that all processes of British Courts including those for realization of fines should be respected in Mysore as they are respected in British Territory; and that on the other side there should not be reciprocity more than the existing law allowed.

I would however suggest to the Government of Mysore that though this is the opinion of the majority of us (or of all if Mr.Justice Nanjundayya now

agrees

60

agrees), yet since that Government have doubts whether Notification No.111 was intended to authorize the levy in this State of fines inflicted by British Indian Courts, while the latter refuse under their law, to levy fines inflicted by Courts of this State, the best course would be to put the matter before the Government of India: and ask whether their instructions of 1878 were intended to enforce this obvious injustice.

Sd. A.E.Staley.

Chief Judge.

Mr.Justice H.V.Nanjundayya:-

With due deference, I would adhere to the opinion already given by me, and I think that a reference may be made to Government as suggested above.

5.7.1904.

Sd. H.V.Nanjundayya.

Judge.

Copies

Registrar.

mm

61 1288 14.

Pal no 646 dy 16.2.06
Encl

To.

The First Assistant to the Hon'ble
the Resident in Mysore.

Sir,

I am directed to state that one Dona, a Postal runner, was convicted by the First Assistant Commissioner and First Class Magistrate of Shimoga, of criminal breach of trust and sentenced to pay a fine of Rs41, in Criminal Case No.32 of 1902-'03. The accused was reported to have property in the Kundapur Taluk of the South Canara District, but none in the Shimoga District; and the Superintendent of Post Offices has moved the District Magistrate of Shimoga to take steps for the recovery of the fine from the property of the accused in British India. The District Magistrate has therefore referred for orders the question whether a warrant can be issued by a Magistrate in Mysore to a Magistrate in British India for the recovery of a fine imposed by the former.

2. The proceedings have also led incidentally to the converse question being raised, viz., whether warrants issued by Magistrates in British India under Sections 386 and 387 of

the Criminal Procedure Code for the levy of fines on convicted persons come within the scope of the late Chief Commissioner's Notification No.111, dated the 23rd July 1878.

3. On the first of these questions, the Durbar think that there is no doubt that fines imposed by Mysore Courts cannot, as the law now stands, be enforced in British India. There is, of course, complete reciprocity in this, among other respects, between Mysore and the Civil and Military Station of Bangalore; but this is in virtue of a special arrangement made in 1881 between the then British Resident and the Durbar, and ratified by the Government of India in 1884: and such arrangement does not extend to British India.

* (Vide your office letter No. 1612-264, dated the 10th November 1884.)

Page 3 B

4. The converse question referred to in para 2 is one of greater difficulty; and the matter has been somewhat complicated by the fact, which has recently come to light, that in a certain number of instances, warrants from British Magistrates for the levy of fines have been given effect to by Magistrates in Mysore presumably in reliance upon the Chief Commissioner's Notification of 23rd July 1878.

5. The question, it seems to the Durbar, must be determined, not by discussions as to what must or must not be

classed under "Criminal Processes", but by a reference mainly to the circumstances under which the Chief Commissioner of Mysore was led to issue the A Notification of 23rd July 1878 No.111. This Notification, it will be seen, was the result of orders conveyed by the Government of India (Foreign Department) in their letter No.84 J, dated the 25th June 1878. Paras 2 and 3 thereof referred to the fact that an executive order had already been issued by the Chief Commissioner directing that processes of Criminal Courts in Wynad should be treated and respected by the Magistrates and Police of Mysore as if such processes had been issued by Mysore Magistrates; and para 8 suggested that the scope of this order might be extended so as to include processes issued by the Magistrates of all other Districts in British India.

6. It thus becomes of importance to examine the terms of the earlier order* in regard to Wynaad processes. It runs as follows:-

"Under the authority communicated "in letter No.43 C.G. from the Offici- "ating Secretary to the Government of "India, Foreign Department, Judicial, "dated 20th September 1877, the Chief "Commissioner directs that, in super- "session of the existing orders and "practice, all summonses [redacted] rants

A

* Notification No.6310/G 930, dated the 2nd October 1877.

"issued by the Magistrates in the Wynaad "District of the Madras Presidency for the "arrest and surrender of persons charged "with offences committed in that District, "shall be acted upon and executed by the "Officers of Police and Magistrates in "the Mysore territory and in Coorg in the "same way and under the same conditions as "if the processes aforesaid had been "issued by Magistrates in Mysore and Coorg".

It is clear, therefore, that though the subsequent Notification of 23rd July 1878 referred generally to "all Criminal processes of whatever description", the processes contemplated therein and in the earlier Notification, of which it was merely an extension to a wider territorial application, were primarily those having for their object "the arrest and surrender of persons charged with offences",- a matter in regard to which, as the Government of India pointed out, there is a certain amount of reciprocity though not to the fullest extent. In the correspondence relating to these Notifications (so far as available in this office) there is no indication that any other Judicial processes were in contemplation; and the Durbar cannot believe that the instructions of the Government of India could have been intended to enforce the levy, in this State, of fines inflicted by British Indian Courts, without at the same time providing

for the levy in British India of fines inflicted by Mysore Courts.

7. The position taken above is also supported by the ruling of the High Court of Madras, in their Proceedings, dated the 28th July 1879,- printed at page 987 of Weir's Digest of Criminal Rulings,- which is to the effect that the provisions of the Code of Criminal Procedure in regard to fines do not authorize the issue of a warrant for the levy in a Foreign State of a fine adjudged by a British Indian Court. A copy of the Ruling in question is enclosed for ready reference. Section 387 of the Criminal Procedure Code, which says that warrants for the levy of fines shall authorize distress and sale of moveables outside the Court's jurisdiction when endorsed by the local District Magistrate refers obviously to places within the same territory.

8. In conclusion, I am to state that considering the great practical importance of the question, the Durbar will be glad if the Hon'ble the Resident will kindly favor them with his views in the matter. As at present advised, the Durbar are of opinion that personal processes are all that the Notification contemplated and that warrants affecting property are not only outside its scope, but are also undesirable unless, with the sanction

the Government of India, the law is so amended as to remove an obvious anomoly and make the enforcement of such warrants legal in British India as in Mysore.

I have &c.,

Secretary.

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Rec'd 24.1.06

Sent 15.2.1906

Copied 16.2.06
Examined. SW 16/2/06

Enc one
SW
16/2/06

67 J 247

No. 1958

From

R. C. H. MOSS KING, Esq., I. C. S.,
FIRST ASSISTANT TO THE RESIDENT IN MYSORE.

To

Pol no 1619 dt 26.3.06

The Dewan of Mysore.

Dated Bangalore, 24th March 1906.

Sir,

I am directed to acknowledge the receipt of Mr. Venkatavaradaiengar's letter, Pol. No.646, dated the 16th February 1906, requesting that the Durbar may be favoured with the Resident's views on the question whether warrants for the levy of fines issued by the Courts in British India come within the scope of the Chief Commissioner's Notification No.111 dated 23rd July 1878.

2. The Durbar are of opinion that personal processes are all that the Notification in question contemplated, and that taking into consideration the circumstances which led to the issue of that Notification, warrants affecting property are not only not within its scope, but that it is undesirable that they should be, unless, with the sanction of the Government of India the law is so amended as to remove an obvious anamoly and make the enforcement of such warrants as legal in British India as in Mysore.

3. The Notification under consideration is in force in Mysore.

Mysore Territory as an adjective law, and whatever may have been the circumstances which led up to the issue of the Chief Commissioner's Notification of 23rd July 1878, it is an accepted maxim that the original intention of any legal provision cannot be adduced in interpretation or modification of its meaning when the latter is clear. Having regard to the expression "all criminal processes of whatsoever description" employed in the said Notification, the Hon'ble the Resident is of opinion that the application of the Notification cannot be restricted to personal processes only, as the Durbar seem to think, and, that the long existing practice of treating warrants affecting property as being within its scope is completely justified.

4. As regards the question whether this state of affairs is undesirable, on the ground, that the absence of complete reciprocity in the matter makes it anomalous, I am to refer to paragraph 11 of the Government of India letter No.84 J. dated the 15th June 1878 in the Foreign Department, quoted in paragraph 5 of the Durbar's letter under reply, in which it is said, that the Governor General in Council considers that it is not desirable "under present circumstances" to resort to the legislation without which complete reciprocity is not attainable. This opinion was given at a date previous to the rendition when the state was under British management and, in view of the well-known principles recognised by the Government of India as to the absence of complete reciprocity in the matter of criminal processes between British India and Native State territory, it would, in the Resident's opinion, be useless to approach the Government of India with a request for reciprocity now that Mysore is under Native Rule, which it was not considered desirable to grant while the State was still governed by a British Commissioner.

6. I am in conclusion to say that the Ruling of the High Court of Madras dated the 28th July 1879 referred to in paragraph 7 of Mr.Venkatavaradaiengar's letter, to the effect that

provisions

provisions of the Code of Criminal Procedure in regard to fines do not authorize the issue of a warrant for the levy in a Foreign State of a fine adjudged by a British Indian Court, is not relevant to the point now under consideration, viz., whether such warrants come within the purview of the late Chief Commissioner's Notification No.111 dated the 23rd July 1878, which, as stated in paragraph 1 above, has still the force of law in Mysore.

I have the honour to be,

Sir,

Your most obedient servant,

First Assistant Resident.

Proceedings of the Government of H/
Highness the Maharaja of Mysore.

-o-o-o-

Read:-

Letter No.334/19, dated the 17th December 1903, from the District Magistrate of Shimoga stating that though, under the Chief Commissioner's Notification No.111 of the 23rd July 1878, warrants for the levy of fines issued by British Indian Magistrates, under Sections 386 and 387 of the Criminal Procedure Code, are being executed by the Magistrates and Police in Mysore, the Mysore Criminal Procedure Code does not seem to authorize Mysore Magistrates to issue warrants to the British Magistracy for the attachment and sale of immoveable properties belonging to persons fined in Criminal cases and situated in British territory; and requesting to be informed if there is any reciprocity in the matter between Mysore and British India as there is between the former and the Civil and Military Station, Bangalore.

2. Government Order No.1639-46/J dated the 13th February 1904, requesting all District Magistrates to furnish Government with instances, if any, in which warrants for the levy of criminal fines were received in their Districts from British Magistrates, with instances in which such warrants were executed by the Magistrates and

Police in Mysore.

3. The following communications from District Magistrates in reply to the above:-

(1) Docket No.436, dated the 15th February 1904, from the District Magistrate of Chitaldrug.

(2) Dockect No.513/36, dated the 22nd March 1904, from the District Magistrate of Shimoga.

(3) Docket No.392, dated the 21st February 1904, from the District Magistrate of Hassan.

(4) Letter No.509, dated the 5th March 1904, from the District Magistrate of Mysore.

(5) Letter No.433, dated the 3rd March 1904, from the District Magistrate of Tumkur.

(6) Letter No.C.1216, dated the 9th March 1904, from the District Magistrate of ~~Kadur~~ Kolar.

(7) Letter No.783, dated the 2nd March 1904, from the District Magistrate of Bangalore.

(8) Correspondence ending with letter Camp No.A dated the 5th April 1904, from the District Magistrate of Kadur.

4. Letter No.49/2 , dated the 5th July 1904, from the Registrar of the Chief Court of Mysore, forwarding, with reference to this office letter No.2424/J, dated the 14th May 1904, the opinion of the Chief Court

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on the question whether, under the Chief Commissioner's Notification of 1878 referred to above, warrants issued by Magistrates in British India for the levy of fines imposed on convicted persons can be lawfully executed in this State, and whether a warrant can be issued by a Magistrate in Mysore to a British Magistrate for the recovery of such fine imposed in this State.

paper under Reg. seal

5. Letter No.1958, dated the 24th March 1906, from the First Assistant to the Hon'ble the Resident in Mysore forwarding the opinion of the Hon'ble the Resident in the matter.

13th June 1906.

Order there on- J 3475-84
Rets 802-03-06.

Having regard to the use of the very general and comprehensive expression "all Criminal processes of whatsoever description" in the Chief Commcissioner's Notification No.111 of the 24rd July 1878, it must be held that the application of that Notification cannot be restricted to personal processes only, and that processes affecting property as well come within its scope. Accordingly, warrants issued by Magistrates in British India under Sections 386 and 387 of the Code of Criminal Procedure for the levy of fines must continue to be executed in the Mysore State, as they have hitherto been.

2. In regard to the converse question raised by the District Magistrate of Shimoga

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he will be informed that the warrants issued by Mysore Courts for the levy of fines cannot, in the absence of any reciprocal arrangement with the British Government, such as ~~that which~~ exists between Mysore and the Civil and Military Station Bangalore, be executed in British India.

Secretary.

Print 11-4-06

To

All District Magistrates.

The Registrar, Chief Court.

The Inspector General of Police in Mysore

Copy sent by Mr. 12-6-06
Received by SW 12/6/06.